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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 2853/2017

SHABNAM ARORA

..... Petitioner

Through: Mr. Shailender Bhardwaj, Advocate
with Mohd. Nasir, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Amit Mahajan, CGSC with
Mr.Kunal Dutt, Advocate for R-1&2.

Mr.Satish Aggarwala, Advocate with Mr.Vineet
Sharma, Advocate for R-3/DRI.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE I.S. MEHTA**

ORDER
25.10.2017

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Crl.M.A.17177/2017 (impleadment)

1. The application is allowed and the applicant Directorate of Revenue Intelligence is impleaded as Respondent No. 3 in the petition.

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2. This is the second petition filed by Mrs. Shabnam Arora, seeking quashing of a detention order dated 10th October 2016 whereby her husband, Mr. Raju Arora, was detained under Section 3 (1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ('COFEPOSA Act') with a view to prevent him from smuggling goods in

future.

3. In the first round, by a detailed judgment dated 28th June 2017, a Division Bench of this Court dismissed the Petitioner's earlier writ petition being W.P.(Crl.) No.643/2017. The Special Leave Petition filed by the Petitioner against said judgment being SLP (Crl.) No. 5874/2017 was dismissed by the Supreme Court on 18th August 2017.

4. It appears that after the dismissal of the SLP, a representation dated 6th September 2017 was made by the Petitioner to the detaining authority, i.e. the Joint Secretary to the Government of India, Central Economic Intelligence Bureau (CEIB) *inter alia* pointing out that the detention order of the co-detenu, Mr. Narender Kumar Jain, who was the employer of the detenu Mr. Raju Arora, had already been quashed by the High Court by its judgment dated 31st May 2017 in W.P.(Crl.) No. 245/2017 (*Sandhya Jain v. Union of India*). On this ground, it was requested that the detention of Mr. Raju Arora should be revoked. The said representation appears to have been considered and rejected by the Director General, CEIB and this fact was communicated to the Petitioner by Memorandum dated 19th September 2017.

5. In the meanwhile, another development that took place was that on 8th September 2017, the Additional Chief Metropolitan Magistrate ('ACMM'), New Delhi acquitted Mr. Raju Arora for the offences under Section 174 and 175 of the Indian Penal Code, 1860 ('IPC') on the ground that the Department had failed to prove that they ever tried to personally serve summons on Mr. Raju Arora. Thereafter, the present petition was filed

on 26th September 2017.

6. The present writ petition was listed for hearing first on 10th October 2017 and thereafter on 17th October 2017 when counsel for the Petitioner sought leave to file an additional affidavit. In the additional affidavit dated 23rd October 2017, the Petitioner states that “there is a long and unexplained delay of more than 39 days in executing the detention order”. Although the detention order is dated 10th October 2016, it was served on Mr. Raju Arora only on 18th November 2016 and, therefore, “there is no live connection or proximity between the activity alleged and activity sought to be curbed due to lapse of considerable time”. In para 6 of the affidavit, it is stated that after the judgment dated 8th September 2017 of the learned ACMM, “the Petitioner became aware of the fact that there was absolutely no effort on the part of the detaining authority to personally serve the detention order dated 10th October, 2016.....”

7. Apart from the above two grounds, it is sought to be urged by learned counsel for the Petitioner that the representation made by the Petitioner on 6th September, 2017 ought to have been considered by the Detaining Authority and not by the Director General, CEIB. Lastly, it is contended that with the detention of the co-detenu Mr. Narender Kumar Jain, the employer of Mr. Raju Arora having been quashed, a different treatment should not be accorded to Mr. Arora.

8. As far as the last mentioned ground is concerned, the Court finds that in the earlier round, this Court considered and rejected the same ground as is

evident from para 5 of its judgment dated 28th June, 2017. With the ground already having been considered and rejected by the Court by the said judgment, which has been affirmed by the Supreme Court, it is not possible for this Court to permit the Petitioner to again urge the same ground for questioning the same detention order.

9. Even as regards the representation made by the Petitioner on 6th September, 2017 not having been considered and rejected by the Detaining Authority, the Court does not appreciate how this affects the validity of the detention order dated 10th October, 2016. Although it would be open to the Petitioner to make repeated representations, the ground on which the representation was made was only that the co-detenu's detention had been quashed. That ground was, for reasons already noted, not available to the Petitioner.

10. As regards the delay in the detention order being served on the husband of the Petitioner, the counsel for the Petitioner was unable to explain what prevented the Petitioner from urging this ground when the earlier writ petition was filed. Even in the additional affidavit filed, there has been no explanation why such a ground could not have been urged earlier. Unless the Court is satisfied that the Petitioner was prevented for some valid reason from urging such ground, it will not be open to the Petitioner to have a second round of litigation to question the same detention order when the first round of challenge has ended in dismissal of a writ petition.

11. As regards the acquittal of Mr. Raju Arora for the offences under

Section 174 and 175 of IPC, the Court does not think it provides the Petitioner with any valid ground to challenge the impugned detention order.

12. For the aforementioned reasons, the Court is not satisfied that the Petitioner has made out any ground for a second shot at challenging the detention order dated 10th October, 2016.

13. The writ petition is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

OCTOBER 25, 2017
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